

Decision 02-06-056 June 27, 2002

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Edison Company (E 3338 E) for Authority to Institute a Rate Stabilization Plan with a Rate Increase and End of Rate Freeze Tariffs.

Application 00-11-038
(Filed November 16, 2000)

Emergency Application of Pacific Gas and Electric Company to Adopt a Rate Stabilization Plan.

Application 00-11-056
(Filed November 22, 2000)

Petition of The Utility Reform Network for Modification of Resolution E-527.

Application 00-10-028
(Filed October 17, 2000)

O P I N I O N

This decision awards Aglet Consumer Alliance (Aglet) \$47,718.94 in compensation for its contribution to Decision (D.) 02-04-016 in the utility retained generation (URG) phase of this proceeding.

1. Background

On May 9, 2002, pursuant to Public Utilities Code §1804(c) ¹, Aglet filed a request for an award of compensation in the amount of \$47,718.94 for its substantial contributions to D.02-04-016.

¹ Unless otherwise stated, all statutory citations are to the Pub. Util. Code.

In D.02-04-016, the Commission established interim cost-of-service revenue requirements for the URG of Pacific Gas and Electric Company (PG&E), Southern California Edison Company (Edison), and San Diego Gas & Electric Company (SDG&E). The URG revenue requirements reflect utility-incurred costs associated with utility-owned generation assets and purchased power. The Commission calculated the utilities' URG revenue requirements based on forecasts of operating expenses, purchased power costs, depreciation, taxes, and a return on rate base (derived from the net book value of retained plant). In D.02-04-016, the Commission adopted, subject to certain true-ups, a January to December 2002 URG revenue requirement of \$2.906 billion for PG&E, \$3.820 billion for Edison, and \$430 million for SDG&E.

2. Procedural Matters

Pursuant to Rule 77.7 (f)(6), concerning decisions (such as today's decision) on intervenor compensation requests, the otherwise applicable 30-day period for public review and comment is being waived.

3. Requirements for Awards of Compensation

Intervenors who seek compensation for their contributions in Commission proceedings must file requests for compensation pursuant to §§ 1801-1812. Section 1804(a) requires an intervenor to file a notice of intent (NOI) to claim compensation within 30 days after the prehearing conference or by a date established by the Commission. The NOI must present information regarding the nature and extent of the customer's² planned participation and an itemized

² To be eligible for compensation, an intervenor must be a customer as defined by § 1802(b). In D.98-04-059 (footnote 14) we affirmed our previously articulated interpretation that compensation be proffered only to customers whose participation

Footnote continued on next page

estimate of the compensation the customer expects to request. The NOI may request a finding of eligibility.

Aglet timely filed its NOI on January 22, 2001, after the first prehearing conference on January 10, 2001, and was found to be eligible for compensation in this proceeding by a ruling dated April 20, 2001. The same ruling found that Aglet had established a rebuttable presumption of significant financial hardship.

Other code sections address requests for compensation filed after a Commission decision is issued. Section 1804 (c) requires an eligible customer to file a request for an award within 60 days of issuance of a final order or decision by the Commissions in the proceeding. Aglet timely filed its request for an award of compensation on May 9, 2002.³ Under § 1804 (c), an intervenor requesting compensation must provide “a detailed description of services and expenditures and a description of the customer’s substantial contribution to the hearing or proceeding.” Section 1802(h) states that “substantial contribution” means that,

“in the judgment of the commission, the customer’s presentation has substantially assisted the commission in the making of its order or decision because the order or decision has adopted in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer. Where the customer’s participation has resulted in a substantial contribution, even if the decision adopts that customer’s contention or recommendations only in part, the commission may award the customer compensation for all reasonable

arises directly from their interest as customers. (See D.88-12-034, D.92-04-051, and D.96-09-040.) Today’s decision, like the statute, uses “customer” and “intervenor” interchangeably.

³ The Commission mailed D.02-04-016 to parties of record on April 8, 2002. The sixtieth day after issuance is June 7, 2002.

advocates fees, reasonable expert fees, and other reasonable costs incurred by the customer in preparing or presenting that contention or recommendation.”

Section 1804(e) requires the Commission to issue a decision that determines whether the customer has made a substantial contribution and what amount of compensation to award. The level of compensation must take into account the market rate paid to people with comparable training and experience who offer similar services, consistent with § 1806.

4. Substantial Contribution to Resolution of Issues

Under § 1802(h), a party may make a substantial contribution to a decision in one of several ways. It may offer a factual or legal contention upon which the Commission relied in making a decision, or it may advance a specific policy or procedural recommendation that the Commission adopted. A substantial contribution includes evidence or argument that supports part of the decision even if the Commission does not adopt a party’s position in total.⁴

Aglet contends it provided a substantial contribution through active participation in this proceeding as demonstrated through its discovery, testimony, filed briefs and comments. Aglet also participated in settlement discussions, evidentiary hearings, and all party meetings. Aglet asserts that it made a substantial contribution on ratemaking structure, expenses, capital-

⁴ The Commission has provided compensation even when the position advanced by the intervenor is rejected. *See* D.89-03-063 (awarding San Luis Obispo Mothers For Peace and Rochelle Becker compensation in Diablo Canyon Rate Case because their arguments, while ultimately unsuccessful, forced the utility to thoroughly document the safety issue involved.)

related costs, income taxes, and other issues. We find, as discussed below, that Aglet did make substantial contributions on these issues.

4.1 Ratemaking Structure

Aglet asserts that it made a substantial contribution by recommending that the Commission adopt only interim ratemaking, due to the hurried record created in this phase. Other parties also made a similar recommendation. We agreed with the reasoning of Aglet and other parties that time constraints would affect the reliability of the data presented at hearing. Thus, we adopted interim ratemaking in D.02-04-016. Aglet made a substantial contribution on this issue.⁵

4.2 Expenses

Aglet recommended adoption of recorded cost ratemaking of certain expenses subject to a reduced return on equity (ROE) as a proxy for reasonableness review. Under Aglet's approach, the Commission would not have to resolve potentially contentious issues surrounding the reasonableness of many daily decisions concerning, e.g., operating and maintenance (O&M) expenses. The ALJ's proposed decision (PD) adopted this approach. The PD reasoned that Aglet's approach promotes ratemaking efficiencies. After reviewing parties' comments on the PD, the final decision acknowledged that:

“Aglet's proposal to temporarily suspend reasonableness review of O&M costs in theory expedites establishment of cost-based rates.”

However, some parties raised legal concerns about the other facet of Aglet's approach, i.e., reducing the utilities' return. Consequently, we accepted Aglet's factual contention concerning efficiencies, but we declined to adopt its approach

⁵ See Findings of Fact 5, 6, and 10, and Conclusion of Law 4 of D.02-04-016.

due to the delay that might arise from defending legal challenges. Although, we did not implement Aglet's proposal, we accepted Aglet's factual contention concerning the benefit of its approach. Consequently, Aglet's proposal contributed to our analysis.

4.3 Capital-Related Costs

Aglet recommended determination of capital-related revenue requirements based on recorded plant in service, limited by two conditions: plant excluded from rate base in a prior proceeding must remain excluded; and rates that include plant additions since the last general rate case should be subject to refund until the plant additions are subject to review in the next general rate case. Aglet also recommended reliance on depreciation lives from each utility's last general rate case, and supported The Utility Reform Network's (TURN's) proposal to eliminate ICIP ratemaking for nuclear plants. In substantial part, we adopted Aglet's recommendations. We adopted Aglet's two limitations on capital-related revenue requirements and also Aglet's recommendation to use remaining depreciation lives.⁶ However, we did not eliminate ICIP ratemaking for Edison and SDG&E due to legal constraints, but we did agree with the factual contention of Aglet, TURN, and Office of Ratepayer Advocates that ICIP ratemaking may produce revenues in excess of costs plus a reasonable return.

Aglet also recommended a 10% ROE for both PG&E and Edison on the theory that risks for the utilities have been reduced. The PD adopted Aglet's

⁶ See Findings of Fact 15, 20, 21, 45, and 47, and Conclusions of Law 8, 16 of D.02-04-016.

recommended 10% ROE for Edison, but not for PG&E. In D.02-04-016, we considered and cited Aglet's testimony that Edison's risks have been reduced, but we ultimately allowed Edison to continue rates of return authorized in 1996. Aglet asserts that although it did not prevail on all cost of capital issues, it made a substantial contribution to the Commission's deliberations. We agree that Aglet contributed to our analysis of cost of capital-related issues; consequently Aglet should receive compensation for its participation on these issues.

4.4 Income Taxes

Aglet asserts that it made a substantial contribution to the decision's treatment of potential timing differences between the recording of income tax revenue requirements and actual payment of taxes by the utilities. Aglet sought retention of the time value of money by ratepayers. Edison opposed Aglet's recommendation, on grounds that it violated the Commission's "separate return basis" adopted in 1984 and it risked violation of certain Internal Revenue Code provisions. PG&E, on the other hand, conditionally agreed that ratepayers may be due the time value of money. We adopted Aglet's proposal in whole and it was also the only intervenor to raise and address the income tax timing issue. Consequently, Aglet has made a substantial contribution.⁷

4.5 Other Issues

Aglet lumps together as "other issues" outcomes where Aglet believes it made substantial contributions. However, because of the mix of results and uncertainty of contribution for these other issues, Aglet voluntarily reduced the

⁷ See Findings of Fact 71 and 72, and Ordering Paragraph 7 of D.02-04-016.

requested time allocated to these other issues by 30%. We agree that Aglet made a substantial contribution on these other issues, which we briefly discuss below.

Aglet and other parties argued that there was no basis for Edison's proposed 10-year depreciation lives for its ownership interests in two nuclear generating stations. The PD accepted Edison's position; however, based in part on Aglet's comments, the final decision adopted depreciation lives equal to useful remaining lives of the nuclear facilities.

Aglet opposed a proposal by the Cogeneration Association of California (CAC) that balancing account recovery of qualifying facility costs should "accommodate payment of past unpaid purchase agreement obligations." Aglet argued that the proposal was vague and inconsistent with bankruptcy practices applicable to PG&E. The Commission, consistent with Aglet's position, rejected CAC's proposal as beyond the scope of the URG phase.

Aglet opposed PG&E's proposed Unrecovered Cost of Service Account (UCSA) and Edison's proposed Net Undercollected Amount Account (NUAA). PG&E argued for an order that the transition period was over, and that the UCSA was needed to record unrecovered transition costs. Edison believed the NUAA should replace "obsolete" transition period accounts. In D.02-04-016, we did not address recovery of transition or stranded costs, and consequently found no need to consider either the UCSA or the NUAA. Consistent with our rationale concerning recovery of stranded costs, Aglet opposed recording costs in any balancing account that would allow post-freeze recovery of costs incurred during the rate freeze.

Aglet opposed utility requests for trigger mechanisms that would authorize rate increases when balancing accounts become undercollected by fixed amounts. Aglet argued that rate increases of such magnitude deserve more

attention than would be afforded by advice letter treatment. Aglet's position contributed to our analysis. In D.02-04-016, we deferred action on the proposed trigger mechanisms over concern that delegating review of requests for rate increases to the advice letter process may conflict with our statutory duty to ensure that rates are just and reasonable.

5. Reasonableness of Requested Compensation

Aglet seeks the following compensation:

Professional Fees

James Weil	179.9 hours X \$220	= \$39,578.00
	48.3 hours X \$110	= <u>5,313.00</u>
	Subtotal:	= \$44,891.00

Other Reasonable Costs

Photocopying	= \$ 1,287.12
Postage	= \$ 926.67
Travel Expenses (bridge tolls, parking, transit fares, vehicle mileage)	= \$ 587.15
Fax Charges	= \$ <u>27.00</u>
Subtotal:	= \$ 2,827.94
Total	= \$ 47,718.94

In D.98-04-059, the Commission adopted a requirement that a customer must demonstrate that its participation was "productive," as that term is used in § 1801.3, where the Legislature gave the Commission guidance on program administration. (See D.98-04-059, *mimeo.* at 31-33, and Finding of Fact 42). In that decision we discuss the requirement that participation should bear a reasonable relationship to the benefits realized through such participation. Customers are directed to demonstrate productivity by assigning a reasonable dollar value to

the benefits of their participation to ratepayers. This exercise assists us in determining the reasonableness of the request and in avoiding unproductive participation.

Aglet contends that it is difficult to assign specific ratepayer savings to Aglet's contributions in this phase of the proceeding, but considering the enormity of the disputed issues, Aglet asserts that its participation has been productive.

Aglet states that the decision adopted URG revenue requirements that total \$7.156 billion for California's three major electric utilities. Consequently, Aglet contends that a tiny contribution to the adopted outcomes would be worth many times more than Aglet's costs of participation. Aglet asserts that Commission's adoption of its contention that rate base must exclude plant that the Commission has previously disallowed could be worth millions of dollars.

Aglet also believes that its contribution to issues concerning income tax timing risks satisfies the productive requirement. At the time of hearings PG&E documents indicated a first quarter 2001 income tax provision of negative \$624 million. The corresponding figure for Edison International, Edison's holding company, was negative \$440 million. We agree with Aglet that if these figures eventually result in a tax deferral of only one quarter, that the resulting time value of money could exceed \$5 million.⁸

We find that Aglet's participation in the URG phase was productive. Overall, the benefits of Aglet's contributions to D.02-04-016 justify compensation in the amount requested.

⁸ Based on 2% interest rate $\times 1/4 \times (\$624 \text{ million} + \$440 \text{ million}) = \$5.3 \text{ million}$.

Aglet allocated its professional time by major issue as follows:

Cost Category	Professional Hours	Removed Hours	Compensated Hours
General work	26.1		26.1
Issues:			
Ratemaking structure	6.0		6.0
Expenses	16.2		16.2
Capital-related costs	61.0		61.0
Income taxes	45.6		45.6
Other issues	<u>+ 35.8</u>	<u>+ 10.7</u>	<u>+ 25.0</u>
Subtotal	190.6 ⁹	10.7	179.9
Resolution E-3765	<u>+ 11.1</u>	<u>+ 11.1</u>	_____
Total	201.7	- 21.8	= 179.9

Aglet voluntarily did not claim compensation for (1) approximately 30% of its hours for “other issues” due to mixed results and uncertainty of credit, and (2) 100% of its hours related to Resolution E-3765.

Aglet documented its hours through detailed records of time spent on the various aspects of this proceeding. The records indicate both the professional hours spent, and the activities associated with the hours. The hourly breakdowns and allocation of hours to different activities reasonably support the claimed hours for Aglet.

Aglet requests an hourly rate of \$220 per hour, and a travel and compensation request rate of \$110 per hour, for work done at the end of the year 2000 and for 2001. These rates were previously awarded Aglet by the

⁹ Total is inexact because of rounding.

Commission in D.01-11-023, D.01-11-054, D.01-11-047, D.02-02-037, D.02-03-037, and D.02-04-039. We find Aglet's requested hourly rates to be reasonable and consistent with past hourly rates for comparable work.

Aglet requests \$2,827.94 for other costs (photocopying, postage, fax, bridge tolls, parking and vehicle costs). These costs have been itemized by date, amount, and activity. Based on the scope of Aglet's work, documents needed, and the size of the service list, these costs appear reasonable.

6. Award

We award Aglet \$47,718.94, calculated as described above. We will assess responsibility for payment among SDG&E, PG&E and Edison according to each utility's share of the utilities' total California jurisdictional electric revenues, as filed most recently with the Commission. Using this method, we calculate SDG&E's share as 8.5 % (\$4,056.11), PG&E's share as 50.0 % (\$23,859.47), and Edison's share as 41.5 % (\$19,803.36). Consistent with previous Commission decisions, we will order that interest be paid on the award amount (calculated at the three-month commercial paper rate), commencing July 23, 2002, the 75th day after Aglet filed its compensation request and continuing until the utilities make full payment of the awards.

As in all intervenor compensation decisions, we put Aglet on notice that the Commission staff may audit Aglet's records related to this award. Thus, Aglet must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. Aglet's records should identify specific issues for which it requests compensation, the actual time spent by each employee, the applicable hourly rate, fees paid to consultants, and any other costs for which compensation may be claimed.

Findings of Fact

1. Aglet has made a timely request for compensation for its contribution to D.02-04-016.
2. Aglet has made a showing of significant financial hardship.
3. Aglet contributed substantially to D.02-04-016.
4. Aglet has requested hourly rates for experts that are no greater than the market rates for individuals with comparable training and experience.
5. Aglet has requested hourly rates for its expert James Weil that have already been approved by the Commission.
6. The miscellaneous costs incurred by Aglet are reasonable.

Conclusions of Law

1. Aglet has fulfilled the requirements of §§ 1801-1812 which govern awards of intervenor compensation.
2. Aglet should be awarded \$47,718.94 for its contribution to D.02-04-016. The award should be allocated among SDG&E, PG&E and Edison as described in the text of the foregoing opinion.
3. Per Rule 77.7(f)(6) of the Commission's Rules of Practice and Procedure, the comment period for this compensation decision may be waived.
4. This order should be effective today so that Aglet may be compensated without unnecessary delay.

O R D E R

IT IS ORDERED that:

1. Aglet Consumer Alliance (Aglet) is awarded \$47,718.94 for its substantial contribution to Decision 02-04-016.

2. Pacific Gas and Electric Company (PG&E) shall pay Aglet \$ 23,859.47, its share of the total award, within 30 days of the effective date of this order. PG&E shall also pay interest on the award at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release (FRSR) G.13, with interest, beginning July 23, 2002, and continuing until full payment is made.

3. Southern California Edison Company (Edison) shall pay Aglet \$ 19,803.36, its share of the total award, within 30 days of the effective date of this order. Edison shall also pay interest on the award at the rate earned on prime, three-month commercial paper, as reported in FRSR G.13, with interest beginning July 23, 2002, and continuing until full payment is made.

4. San Diego Gas & Electric Company (SDG&E) shall pay Aglet \$ 4,056.11, its share of the total award, within 30 days of the effective date of this order. SDG&E shall also pay interest on the award at the rate earned on prime, three-month commercial paper, as reported in FRSR G.13, with interest beginning July 23, 2002, and continuing until full payment is made.

5. The comment period for today's decision is waived.

This order is effective today.

Dated June 27, 2002, at San Francisco, California.

LORETTA M. LYNCH
President
HENRY M. DUQUE
CARL W. WOOD
GEOFFREY F. BROWN
MICHAEL R. PEEVEY
Commissioners